

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 130**

**REHABILITATION FACILITIES**

**PROPOSED REPEAL**

**The Workers' Compensation Division received no public testimony  
regarding the proposed repeal of this rule division.**

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Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING**  
A Statement of Need and Fiscal Impact accompanies this form.

|   |             |  |                         |
|---|-------------|--|-------------------------|
| Dept of Consumer and Business Services,<br>Workers' Compensation Division             |             | OAR CHAPTER 436                                |                         |
| <b>Agency and Division</b>  |             | <b>Administrative Rules Chapter Number</b>     |                         |
| Fred Bruyns   |             | (503) 947- 7717 Fax (503) 947-7581             |                         |
| <b>Rules Coordinator</b>  |             | <b>Telephone</b>                               |                         |
| PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879 |             |  |                         |
| <b>Address</b>  |             |  |                         |
|   |             | Room F (basement, Labor & Industries Building) |                         |
| September 26, 2005  | 10:00 a.m.* | 350 Winter Street NE, Salem, Oregon            | Fred Bruyns             |
| <b>Hearing date</b>   | <b>Time</b> | <b>Location</b>                                | <b>Hearings Officer</b> |

**\*NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through September 30, 2005.**

**The site of the hearing is accessible for individuals with mobility impairments.  
Auxiliary aids for persons with disabilities are available upon advance request.**

**RULEMAKING ACTION**

**ADOPT:** OAR 436-001-0023, 436-001-0027, 436-001-0252, 436-001-0259, 436-001-0296

**AMEND:** OAR chapter 436, division 001; OAR 436-009-0008, 436-045-0008, 436-070-0008, 436-075-0008, 436-080-0070, 436-085-0008, 436-140-0008, 436-150-0008

**REPEAL:** OAR 436-001-0001, 436-001-0007, 436-001-0008, 436-001-0110, 436-001-0150, 436-001-0160, 436-001-0185, 436-001-0201, 436-001-0210, 436-001-0226, 436-001-0260, 436-130-0000, 436-130-0010, 436-130-0020, 436-130-0030, 436-130-0040, 436-130-0050, 436-130-0060, 436-130-0070, 436-130-0080, 436-130-0090, 436-130-0100

**AMEND AND RENUMBER:** OAR 436-001-0000 to 0009, 436-001-0155 to 0019, 436-001-0275 to 0246

ORS 656.726(4)  
Stat. Auth.

Other Authority  
ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter. 26  
Stats. Implemented

**RULE SUMMARY**

**The Workers' Compensation Division proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings," and several related rules in divisions 009, 045, 070, 075, 080, 085, 140, and 150.**

- House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. These proposed adoptions and amendments reflect that change. The Workers' Compensation Division proposes to repeal several rules in OAR 436-001 because the Workers' Compensation Board already has rules in place that govern the conduct of hearings. The Workers' Compensation Division proposes to amend and renumber some rules in OAR 436-001 to place rules in a sequence more aligned with the sequence of appeals and hearings.

**The Workers' Compensation Division proposes to repeal OAR chapter 436, division 030, "Rehabilitation Facilities," in its entirety.**

- ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1.

**Request for public comment:** The Workers' Compensation Division requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us)

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 30, 2005  
Last Day for Public Comment

/s/ John L Shilts  
Authorized Signer and Date

8/12/05

John L. Shilts, Administrator, Workers' Compensation Division  
Printed name

\*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Distribution: WCD-ID, S, T, U, AT, CE, EG, IA, LU, LL, NM, CI, ML, MR, VR, S0, S1, S2, S3, S4, S5, S6, S7, S8

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services,  
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

|   |   |                                  |
|---|---|----------------------------------|
| In the Matter of  | ) |                                  |
| The Amendment of OAR:                                       | ) |                                  |
| 436-001, Procedural Rules Governing Rulemaking and Hearings | ) |                                  |
| 436-009-0008, Oregon Medical Fee and Payment                | ) |                                  |
| 436-045-0008, Reopened Claims Program                       | ) | Statutory Authority,             |
| 436-070-0008, Workers' Benefit Fund Assessment              | ) | Statutes Implemented,            |
| 436-075-0008, Retroactive Program                           | ) | Statement of Need,               |
| 436-080-0070, Noncomplying employers                        | ) | Principal Documents Relied Upon, |
| 436-085-0008, Premium Assessment                            | ) | Statement of Fiscal Impact       |
| 436-140-0008, Construction Carve-Out Programs               | ) |                                  |
| 436-150-0008, Workers' Benefit Fund Claims Program          | ) |                                  |
| The Repeal of:  | ) |                                  |
| 436-130, Rehabilitation Facilities                          | ) |                                  |

**Statutory Authority:** ORS 656.726(4)

**Other Authority:**

**Statutes Implemented:** ORS 656.704, Enrolled House Bill 2091 – Oregon Laws 2005, chapter 26

**Need for the Rule(s):** These proposed rule changes implement changes to Oregon laws brought about by passage of House Bill 2091.

**Documents Relied Upon:** House Bill 2091; rulemaking advisory committee meeting records and issues documents. These records are available for public inspection in the Administrator's Office, Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

**Fiscal and Economic Impact:** House Bill 2091 (Oregon Laws 2005, chapter 26) moves hearings on workers' compensation matters currently processed by the Office of Administrative Hearings to the Workers' Compensation Board, for all hearings held on or after January 2, 2006. This streamlines the hearing process such that all hearings, regardless of the disputed issue, will be processed by the Workers' Compensation Board. The related proposed rule changes do not substantially alter the actions required of the parties to a hearing, and should not have any significant economic impact on any persons or businesses, including small businesses. The Workers' Compensation Division estimates a savings to the Department of Consumer and Business Services, Premium Assessment Operating Account, during the 2005-2007 biennium of \$277,500. This savings estimate was prepared during analysis of House Bill 2091 and is not altered by proposed rule changes.

ORS 656.530, the statute implemented by OAR 436-130, was repealed by Oregon Laws 1999, chapter 273, section 1. The repeal of OAR 436-130 will not have any fiscal impact on any party.

**Administrative Rule Advisory Committee consulted:** Yes, 7/20/2005

*/s/ John L. Shilts*

8/12/05

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
PROPOSED REPEAL OF RULES: REHABILITATION FACILITIES**

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**EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 130**

**436-130-0000 Authority for Rules**

[The rules are promulgated under the director's general rule-making authority contained in ORS 656.726(3) and 656.622(7).]

**Stat. Auth.:** ORS 656.530

**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94

**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0010 Purpose**

[The purpose of these rules is to establish the requirements for qualifying as a Rehabilitation Facility pursuant to ORS Chapter 656.530; and to establish guidelines for administering disbursements from the Reemployment Assistance Reserve for premium refunds.]

**Stat. Auth.:** ORS 656.530

**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94

**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0020 Applicability of Rules**

[(1) These rules apply to all refunds from the Reemployment Assistance Reserve made pursuant to ORS 656.530, beginning 30 days following the first complete calendar quarter after the effective date of these rules.

(2) These rules apply to all rehabilitation facilities previously determined eligible for premium refund; as well as any rehabilitation facility determined eligible for premium refund, on or after the effective date of these rules.

(3) Any rehabilitation facility already established as eligible for refunds on the effective date of these rules shall remain eligible unless subsequent to the effective date of these rules they no longer satisfy any of the requirements of OAR 436-130-0060.]

**Stat. Auth.:** ORS 656.530

**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94

**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0030 Definitions**

[Except where the context requires otherwise, these rules are governed by the following definitions:

(1) "Compliance" means the Compliance Section of the Workers' Compensation Division.

(2) "Department" means the Department of Consumer and Business Services.

(3) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(5) "Employment" means paid work for disabled and severely handicapped individuals.

(6) "Employment Opportunity" means provision of situational assessment, job training and on-going support necessary to place disabled and severely handicapped individuals in remunerative occupations.

(7) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon.

(8) "Premium" means all net amounts paid by the Rehabilitation Facility necessary to obtain or maintain Oregon workers' compensation insurance coverage. Premium does not include assessments/contributions paid in accordance with ORS 656.506 and ORS 656.538.

(9) "Rehabilitation Facility" means a non-profit facility established and operated by a private organization, agency or institution to provide vocational training, employment opportunity and employment for disabled or severely handicapped individuals, but does not include a facility established or operated by this state or a political subdivision within this state.

(10) "Vocational Training" means any services necessary to enable disabled and severely handicapped individuals to engage in remunerative occupations.]

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PROPOSED REPEAL OF RULES: REHABILITATION FACILITIES**

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**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0040 Administration of Rules**

[For the purpose of administering these rules, orders of compliance are deemed orders of the director.]

**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0050 Administrative Review**

(1) Any party as defined by ORS 656.005(20) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 20 days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the Administrator within said 20 days of receipt of notice.

(2) Any party aggrieved by a decision of the director or division granting, denying or recovering reimbursements or refunds from the Reemployment Assistance Reserve pursuant to ORS 656.622 qualifies for review by the director.

(a) The request for review must be received by the director no later than 60 days after the date of the decision.

(b) The request for review shall specify the reasons why the decision is appealed. No review shall be granted unless the request meets the requirements of this subsection.

(c) The decision of the director will be issued in writing and pursuant to ORS 656.622 is not subject to review by any court or other administrative body.

(3) Any party aggrieved by an action or order of the director or division pursuant to these rules, other than as described in sections (1) and (2), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the director.

(4) Any party aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the director determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.]

**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0060 Criteria for Eligibility**

(1) In order to be established as a rehabilitation facility pursuant to these rules, and eligible for premium refund, the facility must submit:

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WORKERS' COMPENSATION DIVISION  
PROPOSED REPEAL OF RULES: REHABILITATION FACILITIES**

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- (a) Documentation that the facility is a non-profit organization;
  - (b) Documentation that the facility provides vocational training, employment opportunity and employment to disabled and handicapped individuals;
  - (c) Documentation that the facility was not established and is not operated by this state or a political subdivision within this state;
  - (d) A copy of the Oregon Department of Revenue letter confirming the facility's tax exempt status or a copy of the Internal Revenue Service letter confirming the facility's tax exempt status.
  - (e) The name of the facility's workers' compensation insurance carrier.
  - (f) Any other information deemed necessary by the director.
- (2) Within 30 calendar days of receipt of all information required in section (1) of this rule, Compliance will review the information and notify the facility and the facility's insurer that it has been determined to be eligible for premium refund, or that it has been determined to be ineligible for premium refund and the reason therefore.
- (3) The rehabilitation facility shall report any change in eligibility status to Compliance within 30 days of the effective date of the change in status.]

**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

### **436-130-0070 Refunds**

- [(1) Refunds shall be made by the division directly to eligible rehabilitation facilities after receipt and approval of documentation of premium paid by the rehabilitation facility.
- (2) Refunds shall be limited to 75 percent of paid premium.
- (3) Requests for refunds shall be in a form and format as prescribed by bulletin.
- (4) Requests for refund shall be submitted by the insurer on behalf of the rehabilitation facility no later than 30 calendar days after the end of the calendar quarter in which the premium was paid. However, insurers are not precluded from submitting requests more frequently.
- (5) Refunds of premium paid prior to the effective date of the eligibility determination is contingent upon the rehabilitation facility providing documentation that the facility met the requirements of 436-130-0060(1) for the period for which the refund is sought.
- (6) Any premium adjustments, including retrospective rating plan adjustments to previously refunded policy periods must be reported to Compliance by the insurer no later than 30 calendar days after the end of the calendar quarter in which the adjustment was made.
- (7) If the rehabilitation facility receives a monetary adjustment to previously refunded premium, 75 percent of the amount of that adjustment shall be reimbursed to the department no later than 45 calendar days after the end of the calendar quarter in which the adjustment was made.
- (8) Where a rehabilitation facility also has unrelated operations not eligible for refunds, Compliance may evaluate and assign a percentage factor to the facility for purposes of calculating the net refund due. The insurer shall report the gross premium paid by the facility to Compliance without regard to any factor assigned.]

**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

### **436-130-0080 Assessment of Civil Penalties**

- [(1) Pursuant to ORS 656.745, the director may assess a civil penalty against an insurer which fails to comply with these rules.
- (2) The following penalty schedule may be applied when the director finds the insurer has failed to comply with these rules.
- (a) One hundred dollars (\$100) for each instance in which the insurer has failed to request in accordance with OAR 436-130-0070(4).
  - (b) Up to one thousand dollars (\$1,000) for each instance in which the insurer has failed to report within 30 days, adjustments to previously refunded policy periods which ultimately result in an overpayment.]

**Stat. Auth.:** ORS 656.530  
**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94  
**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

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**436-130-0090 Issuance/Service of Penalty Orders**

[(1) When a penalty is assessed as provided by OAR 436-130-0080, Compliance shall serve an order on the party, with a notice of the rights provided under ORS 656.740.

(2) Compliance shall serve the order by delivering a copy to the party in the manner provided by ORCP 7D.(3); or by sending a copy to the party by certified mail with return receipt requested.]

**Stat. Auth.:** ORS 656.530

**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94

**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**

**436-130-0100 Audits**

[(1) Rehabilitation facilities and their insurers are subject to periodic audits by the department. All refunds are subject to subsequent audits, and the director may deny or recover refunds under, but not limited to, any of the following conditions:

(a) The paid premium reported and reimbursed was overstated.

(b) The rehabilitation facility received a monetary adjustment to previously refunded premium and failed to reimburse the department 75 percent of the amount of the adjustment within 30 calendar days after the end of the calendar quarter in which the adjustment was made.

(c) The rehabilitation facility has received refunds for any period in which the facility was not eligible pursuant to OAR 436-130-0060.

(2) Disallowed refunds may be recovered by the department directly or from future refunds. If the department finds upon audit that procedures which led to disallowed refunds are still being used, the department may withhold further refunds until corrections satisfactory to the department are made.]

**Stat. Auth.:** ORS 656.530

**Hist:** Filed 4-1-94 as Admin. Order 94-051, eff. 5-1-94

**Repealed xx/xx/xx as Admin. Order xx-xxx, eff. xx/xx/xx**